

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

STATE OF OREGON,)
Plaintiff,) Case No. CV08-844-HU
vs.)
DOUGLAS L. HADSELL,) FINDINGS AND RECOMMENDATION
Defendant.)

)

HUBEL, Magistrate Judge:

Pro se petitioner Douglas Hadsell initiated this action by filing a Notice of Removal, seeking to remove a District Attorney's Information filed in the Circuit Court of the State of Oregon for Multnomah County, entitled State of Oregon v. Douglas L. Hadsell, No. 071254879, in which petitioner is charged with failure to report as a sex offender within 10 days of a birthday, in violation of Or. Rev. Stat. § 181.599(1). The Notice of Removal alleges that arraignment in the Circuit Court was begun on or about December 9, 2007, but that no plea has been entered.

For the reasons that follow, I recommend that this action be remanded to the Circuit Court.

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1 Pursuant to 28 U.S.C. § 1446(c)(4), a district court shall
2 examine a removal petition promptly. "If it clearly appears on the
3 face of the petition and any exhibits annexed thereto that the
4 petition for removal should not be granted, the court shall make an
5 order for its summary dismissal." Id. See also Davis v. Superior
6 Court of California, 464 F.3d 1272, 1273 (9th Cir. 1972) (court may
7 remand patently frivolous case without a hearing); Tomasino v.
8 California, 451 F.2d 176, 177 (9th Cir. 1971).

9 A state criminal prosecution may be removed to federal
10 district court pursuant to 28 U.S.C. § 1443(1) if it appears (1)
11 "the right allegedly denied the removal petitioner arises under a
12 federal law 'providing for specific civil rights stated in terms of
13 racial equality;'" and (2) the denial of the specific civil right
14 is manifest in a formal expression of state law or in an equally
15 firm predictor. Johnson v. Mississippi, 421 U.S. 213, 219
16 (1975) (quoting Georgia v. Rachel, 384 U.S. 780, 792, 803 (1966));
17 see also Davis, 464 F.3d at 1272.

18 Petitioner alleges that this court has jurisdiction under the
19 Fourteenth Amendment's due process clause, the First Amendment, and
20 the commerce clause of the United States Constitution, as well as
21 the United Nations Human Rights Convention and the American States
22 Human Rights Convention. Petitioner has not alleged anything that
23 meets the requirements of 28 U.S.C. § 1443(1). Nor does it appear
24 he can do so if allowed to amend his complaint. Accordingly,
25 petitioner's attempt to remove the state criminal proceedings to
26 this court is without merit, and no proper claim could be stated

1 upon amendment. Because amendment would be futile, a hearing is not
2 necessary.

3 I recommend that this case be remanded to the Circuit Court of
4 the State of Oregon for the County of Multnomah.

5 **Scheduling Order**

6 The above Findings and Recommendation will be referred to a
7 United States District Judge for review. Objections, if any, are
8 due September 2, 2008. If no objections are filed, review of the
9 Findings and Recommendation will go under advisement on that date.
10 If objections are filed, a response to the objections is due
11 September 16, 2008, and the court's review of the Findings and
12 Recommendation will go under advisement with the District Judge on
13 that date.

14 Dated this 15th day of August, 2008.

15 /s/ Dennis J. Hubel

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17 Dennis James Hubel
United States Magistrate Judge
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